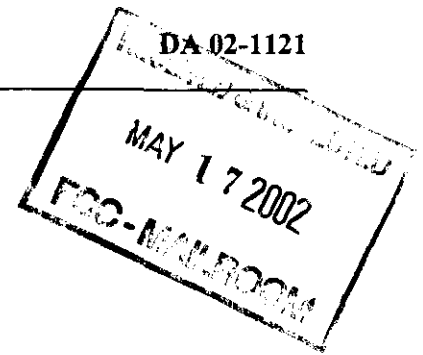


## Federal Communications Commission

DA 02-1121

Before the  
Federal Communications Commission  
Washington, DC 20554



In the Matter of )  
 )  
Request for Review of the )  
Decision of the )  
Universal Service Administrator by )  
 )  
East Meadow School District )  
East Meadow, New York )  
 )  
Federal-State Joint Board on )  
Universal Service )  
 )  
Changes to the Board of Directors of the )  
National Exchange Carrier Association, Inc. )

File No. SLD-208882

CC Docket No. 96-45 ✓

CC Docket No. 97-21

**ORDER****Adopted: May 10, 2002****Released: May 13, 2002**

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division (Division) has under consideration a Request for Review filed by East Meadow Union Free School District (East Meadow), East Meadow, New York.<sup>1</sup> East Meadow requests review of a decision by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator), rejecting one of East Meadow's Funding Year 3 requests for discounts under the schools and libraries universal service support mechanism for failure to satisfy minimum processing standards.<sup>2</sup> For the reasons set forth below, we deny East Meadow's Request for Review.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.<sup>3</sup> In order to receive discounts on eligible services, the Commission's rules require that the applicant

<sup>1</sup> Letter from Winston E. Himsworth, E-Rate Central, on behalf of East Meadow Union Free School District, to Federal Communications Commission, filed July 16, 2001 (Request for Review). Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

<sup>2</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to Winston E. Himsworth, E-Rate Central, dated June 22, 2001 (Administrator's Decision on Appeal).

<sup>3</sup> 47 C.F.R. §§ 54.502, 54.503.

submit to the Administrator a completed FCC Form 470, in which the applicant sets forth its technological needs and the services for which it seeks discounts.<sup>4</sup>

3. Once the applicant has complied with the Commission's competitive bidding requirements and entered into agreements for eligible services, it must file an FCC Form 471 application to notify the Administrator of the services that have been ordered, the carriers with whom the applicant has entered into an agreement, and an estimate of funds needed to cover the discounts to be given for eligible services.<sup>5</sup> An applicant provides the information for each funding request in a separate Block 5 of FCC Form 471.<sup>6</sup> Among other information, Block 5 requires the applicant to indicate, in Item 22 of Block 5, the entity or entities receiving service by reference to information specified in Block 4.<sup>7</sup> Using information provided by the applicant in its FCC Form 471, the Administrator determines the amount of discounts for which the applicant is eligible. Approval of the application is contingent upon the filing of FCC Form 471, and funding commitment decisions are based on information provided by the school or library in this form.

4. Under the Commission's regulations, SLD is authorized to establish and implement filing periods and program standards for FCC Form 471 applications by schools and libraries seeking to receive discounts for eligible services.<sup>8</sup> Pursuant to this authority, every funding year, SLD establishes and notifies applicants of a "minimum processing standard" to facilitate the efficient review of the thousands of applications requesting funding.<sup>9</sup> In Funding Year 3, item 22 of Block 5, the entity or entities receiving service, was part of the minimum processing standards.<sup>10</sup> When an applicant submits a Block 5 Worksheet that omits information required by a minimum processing standard, SLD automatically rejects the funding request and returns it to the applicant.

5. East Meadow filed its FCC Form 471 with SLD on January 17, 2000.<sup>11</sup> In one of its Block 5 funding requests, seeking telecommunications services from Verizon, East Meadow

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<sup>4</sup> 47 C.F.R. § 54.504(b)(1), (b)(3).

<sup>5</sup> 47 C.F.R. § 54.504(c).

<sup>6</sup> Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (September 1999) (FCC Form 471).

<sup>7</sup> *Id.*

<sup>8</sup> See 47 C.F.R. § 54.507(c); *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, CC Docket Nos. 97-21 and 96-45, Third Report and Order in CC Docket No. 97-21 and Fourth Order on Reconsideration in CC Docket No. 97-21 and Eighth Order on Reconsideration in CC Docket No. 96-45, 13 FCC Rcd 25058 (1998).

<sup>9</sup> See, e.g., SLD web site, Form 471 Minimum Processing Standards and Filing Requirements for FY3, <<http://www.sl.universalservice.org/reference/471mps.asp>>.

<sup>10</sup> *Id.*

<sup>11</sup> FCC Form 471, East Meadow Union Free School District, filed January 17, 2000 (East Meadow Form 471).

left Item 22 blank, and the request was accordingly rejected for failure to satisfy minimum processing standards.<sup>12</sup> East Meadow appealed to SLD, arguing that that the missing information was obvious from the record.<sup>13</sup> SLD denied the appeal, applying the analysis in the Commission's *Naperville Order*.<sup>14</sup> East Meadow then filed the pending Request for Review, asserting that SLD applied the *Naperville Order* incorrectly.<sup>15</sup>

6. In light of the thousands of applications that SLD must review and process each funding year, we find it administratively appropriate to require applicants to strictly adhere to minimum processing standards.<sup>16</sup> In the *Naperville Order*, however, the Commission determined that, under the totality of the circumstances presented in that case, SLD should not have returned an application without consideration for failure to enter information required by SLD's minimum processing standards.<sup>17</sup> The Commission specifically found that "(1) the request for information was a first-time information requirement on a revised form, thereby possibly leading to confusion on the part of the applicants; (2) the omitted information could be easily discerned by SLD through examination of other information included in the application; and (3) the application is otherwise substantially complete."<sup>18</sup>

7. Under the totality of the circumstances, we find that East Meadow's application was properly rejected. Here, unlike in the *Naperville Order*, the entity or entities receiving service could not be easily discerned by SLD through examination of other information included in the application. As noted above, for each Block 5, an applicant specifies in Item 22 which entity or group of entities listed in the applicant's Block 4 worksheets will receive the service.<sup>19</sup>

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<sup>12</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to Bretton L. Himsworth, East Meadow Union Free School District, dated May 30, 2000, at 1.

<sup>13</sup> Letter from Winston E. Himsworth, on behalf of East Meadow Union Free School District, to Schools and Libraries Division, Universal Service Administrative Company, filed June 19, 2000, at 1.

<sup>14</sup> Administrator's Decision on Appeal, at 1-2; *Request for Review by Naperville Community Unit School District 203, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-203343, CC Dockets No. 96-45 and 97-21, Order, 16 FCC Rcd 5032, para. 12 (2001) (*Naperville Order*).

<sup>15</sup> Request for Review at 2.

<sup>16</sup> See *Request for Review by Anderson School Staatsburg, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of National Exchange Carrier Association*, File No. SLD-13364, CC Docket No. 96-45 and 97-21, Order, 15 FCC Rcd 181 (Com. Car. Bur. 2000), at para. 8 ("In light of the thousands of applications that SLD review and processes each funding year, it is administratively necessary to place on the applicant the responsibility of understanding all relevant program rules and procedures."); see also Universal Service Administrative Company (USAC), Schools and Libraries Program, Reference Area: Form 471 Minimum Processing Standards and Filing Requirements, <http://www.sl.universalservice.org/reference/471mps.asp>, (outlining the manual and online filing requirements for FCC Form 471).

<sup>17</sup> *Naperville Order*.

<sup>18</sup> *Id.* at para. 16.

<sup>19</sup> *Id.*: see *supra*, para. 3.

In Block 4, an entity is listed together with its associated discount rate, and groups of entities that will be receiving shared services are listed with their average rate.<sup>20</sup> In the *Naperville Order*, the Commission found that, although the Block 5 funding request at issue did not specify the entities that would receive service, the discount rate requested in the funding request was uniquely attributable to the average discount rate of all of the schools, as calculated on an accompanying Block 4 worksheet.<sup>21</sup> Thus, it was clear that the funding request sought shared services for the district schools. Here, in contrast, the discount rate sought for the request, 40%, is both the district average discount rate and the rate of each of the individual schools.<sup>22</sup> Because the requested discount rate was not uniquely associated with a particular site or group of sites presented in the Block 4 worksheets accompanying the application, SLD could not determine, based on the discount rate, what entity or entities would be receiving the requested services.

8. East Meadow argues that the information is easily discernable because, on its Block 4, East Meadow checked that it was “[a]pplying for discounts on services shared by ALL schools in the district . . . .”<sup>23</sup> However, East Meadow neglects the language that follows in the Block 4: “with or without site-specific services as well.”<sup>24</sup> Therefore, checking this language did not indicate that East Meadow would only be requested shared services on behalf of all of its schools.

9. East Meadow argues that the attached documents referred to in Item 22 of the rejected Block 5 unambiguously indicated that all schools would be receiving the service.<sup>25</sup> East Meadow points to a two-page contract accompanying Attachment 3, in which the service is referred to as “circuits to be provided between East Meadow ufsd and [Verizon].”<sup>26</sup>

10. In addressing a failure to supply information on another line also subject to minimum processing standards, the Common Carrier Bureau (Bureau) has held that information

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<sup>20</sup> The Block 4 worksheet generally requires the applicant to list all the entities receiving a service for which discounts are sought. See FCC Form 471, Block 4. In those situations where an applicant is seeking discounts for a service to be shared by a group of schools within the district, the worksheet calculates the weighted average discount of those schools which is then applied to the shared service. *Id.* Where a school district is seeking multiple shared services for different groups of schools within its district, the applicant must complete a different Block 4 worksheet for each group, labeling the worksheets “A-1”, “A-2”, and so forth. In this situation, separate Block 4 worksheets are required because the weighted average discount will vary from group to group. *Id.* The FCC Form 471 requests that the applicant identify the Block 4 worksheet for a particular group at Item 22 of the Block 5 worksheet used to request the discounted services to be received by that group. *Id.*

<sup>21</sup> *Naperville*, para. 13.

<sup>22</sup> East Meadow Form 471, Block 4.

<sup>23</sup> *Id.*; Request for Review at 2.

<sup>24</sup> East Meadow Form 471, Block 4.

<sup>25</sup> Request for Review at 2.

<sup>26</sup> *Id.*

found only in attachments does not establish that such information is “easily discernable.”<sup>27</sup> The Bureau concluded that “[i]t would significantly increase SLD’s administrative costs if it had to examine each attachment in thousands of applications in order to determine the category of service.”<sup>28</sup> We find that, in this case, requiring SLD to consider attachments to determine the recipient of service raises similar concerns.

11. Even assuming that SLD should consider such attachments, however, we find that the relevant information was not “easily discernable.” Even if SLD were to consider the contract here, the reference to “circuits to the [district]” would not qualify as the sort of unambiguous evidence from which the entities receiving service may be easily discernable. Therefore, we deny the Request for Review.

12. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission’s rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), that the Request for Review filed by East Meadow Union Free School District, East Meadow, New York, on July 16, 2001 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Mark G. Seifert  
Deputy Chief, Telecommunications Access Policy Division  
Wireline Competition Bureau

<sup>27</sup> *Request for Review by Centerville School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-199778, CC Dockets No. 96-45 and 97-21, Order, DA 02-387, para. 7 (Com. Car. Bur. rel. February 21, 2002). This case involved Item 11, the category of service.

<sup>28</sup> *Id.*